IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.847 OF 1998

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

BINA HARILAL LUHAR

VERSUS

SONI DHANKUVARBEN JAYRAM

Appearance:
MR JM MALKAN for Petitioner
MR PN BAVISHI for Respondent No.1
None present for Respondent No.2

Coram: S.K. Keshote,J
Date of decision: 22/02/1999

C.A.V. ORDER

#. The petitioner-original obstructor challenges by this civil revision application under section 115 of the Code of Civil Procedure, 1908, the order dated 24.2.98 of the Civil Judge, (S.D.), Jamnagar, below ex.17 in Execution Petition No.24/85 and also the order dated 2.5.98 passed by Extra Assistant Judge, Jamnagar, dismissing the Misc. Civil Appeal No.18 of 1998. Under the first order, the learned Executing Court rejected the objection of the obstructor against the execution of decree and under the second order, the appellate Court confirmed that order in appeal.

#. The facts of the case in brief are that the obstructor-petitioner-Bina Harilal Luhar is daughter of late Harilal D Luhar. Shri Harilal Luhar admittedly expired in the year 1981. The respondent No.2-Shantaben Harilal Luhar, is widow of late Harilal Luhar. The decree-holder Soni Dhankuvarben Jayram filed a suit for possession of disputed property against the judgment-debtor defendant-respondent No.2. She has come up with the case that Harilal D Luhar was a tenant inducted by the mortgagee and as mortgage has been redeemed, he has no right to continue in possession and further he has no protection of the Rent Control Act. That suit has been contested by the judgment-debtor defendant-respondent No.2. The suit being Regular Civil Suit No.153 of 1983 came to be decreed against the judgment-debtor defendant-respondent No.2 by the trial Court on 17th December 1984. The decree-holder plaintiff-respondent No.1 herein filed the execution petition for execution of the said decree in Executing Court which was registered as Execution Petition No.24 of 1985. However, as the decree of the trial Court has been stayed in Regular Civil Appeal No.42 of 1985, filed by the respondent No.2, the decree of the learned trial Court could not be executed. This Regular Civil appeal came to be rejected by the first appellate Court on 1.10.96. The respondent No.2 has not felt contended by the judgment of the first appellate Court and he has taken up the matter in the Second Appeal No.72 of 1997 before this Court which was dismissed by this Court on 8.3.97. So the decree of possession granted by the learned trial Court against the defendant-respondent No.2 has attained finality. The first innings was completed but as usual as it happens, and as what is has been said in the 1930s by the Privy Council, real trouble of the decree-holder starts when he puts the decree in execution. None other than the daughter of the defendant-respondent No.2 has come as obstructor to this decree, and she filed objection that in this decree she cannot be dispossessed as she was one of the co-tenant in

the suit property and as the decree is not against her she cannot be dispossessed. These objections of this lady were not found favour with the Executing Court and as the same were rejected she preferred appeal which has also been rejected and she therefore came before this Court by way of this civil revision application.

#. The learned counsel for the petitioner-obstructor, relying on the decision of this Court in the case reported in 38(3) GLR 2103 and of the Apex Court in the case reported in 1991(2) RCJ 718, contended that this decree which has been passed only against her mother is not executable against her.

#. On the other hand, the learned counsel for the decree holder respondent No.1 contended that this is nothing but only a frivolous objection which has been raised by none other than the daughter of the judgment-debtor. It is a case where now the daughter is obstructing the Execution of Decree only for her benefit as well as for the benefit of her mother and as such it cannot be taken to be of any substance. The lady, the mother of the obstructor has contested the suit filed by the plaintiff-decree holder-respondent No.2 hotly and the matter has been taken up to this Court in the Second Appeal. There she failed. At no point of time this lady, the petitioner herein came forward to put her claim in the suit. Contrary to it, now after when the decree has attained finality and it remained under stay for about 13 years, she has come up with all these objections which is nothing but only malafides. It has next been contended that plea of tenancy sought to be raised is nothing but only a manufactured plea. Otherwise, the mother could have been taken this plea and further if she was really having any force in this plea, then she could have come forward in the suit and prayed for impleading her as a party. She has not taken all these steps for obvious reason that she has no right but she has now raised this plea only with the object that both, she as well as her mother may not be dispossessed from the suit premises.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. There is a concurrent decision of three Courts that late Harilal D Luhar was a tenant inducted by the mortgagee and as such on redemption of mortgage, he has to go from the suit property. He was not a tenant who could have any protection under the Bombay Rent Control Act. After redemption, instead of voluntarily surrendering the possession to the plaintiff-decree

holder respondent No.1, that person has forced the decree-holder to file the suit and he has litigated the matter upto this Court. Even after the second appeal has been decided against her, the obstruction has now been put to the execution of decree. If we go by this relationship of the original tenant inducted by the mortgagee, the defendant in the suit, i.e the judgment-debtor and the petitioner, it is clearly a case where at the hands of and for the benefits of the judgment-debtor, these objections have been raised. In the facts of this case, both the Courts below have not committed any error in not accepting these objections filed by the petitioner. What she really intended was that now decree-holder should prove that she is not tenant in the premises. Once a contested decree has been passed against none other then the mother of the petitioner, how far it is justified and reasonable to raise such objection by the daughter. It is also not in dispute that she has been married. It is however a different story that she could not continue long at matrimonial home and divorce decree has been passed. Decisions on which reliance has been placed by the learned counsel for the petitioner are of little help to the petitioner in this case. It is a case where the Courts below have not committed any error, much less a jurisdictional error in passing of this order. It is a case where this dishonest plea which is manufactured for the purpose of defeating the fruits of decree, a contested decree, which has been granted by the Court below in favour of the plaintiff-decree-holder-respondent No.1 has been raised by the present petitioner. If on such a dishonest plea the Courts fall in trap and grant relief to such persons then certainly it will amount to abuse of process of the Courts. Both the Courts below have rightly declined to grant any relief to the petitioner. In the result, this civil revision application fails and the same is dismissed.

#. The learned counsel for the petitioner, on conclusion of his arguments, had made a request that in case this Court rejects this civil revision application, then a reasonable time may be granted to the petitioner and interim relief granted by this Court earlier may be continued so that she may approach the higher Court against this order. I fail to see any justification in this prayer. When this Court is not inclined to grant relief to the petitioner on merits of the matter, how far it is justified to grant such indulgence to the petitioner. In case, the petitioner approaches to the higher Court against this order, then that Court in case considers it to be a fit case to grant interim relief

will pass order granting interim relief in favour of the petitioner. When two Courts below have not considered it to be a fit case to grant this relief to the petitioners and those decisions have been confirmed by this Court, hardly any equities lie in favour of the petitioner to grant such relief to her. Interim relief earlier granted by this Court stands vacated. The petitioner is directed to pay costs of this civil revision application to respondent No.1.

(S.K.Keshote, J.)

[sunil]